

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 624 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SURYAKANT @ SURESH BALKISHAN MORE

Appearance:

1. Criminal Appeal No. 624 of 1994
PUBLIC PROSECUTOR for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/08/98

ORAL JUDGEMENT

(PER BHATT,J)

1. The appellant-State of Gujarat has challenged the order recorded in Sessions Case No.299/91 by the Addl.City Sessions Judge, Ahmedabad of acquittal of the charge made under section 302 IPC by filing this acquittal appeal under section 377 of Cr.P.C, 1973(Code) against the respondent-original accused-Bharat Chimanlal Patel.

2. Respondent-Original accused-Bharat Chimanlal Patel and Suryakant Balkishan More were charged for the offence punishable under section 307, 326, 452, 302, 324, 323 read with Section 34 IPC and also under section 135 Bombay Police Act, 1851 before the Additional City Sessions Judge, Court No.8, Ahmedabad city in Sessions Case No.299/91. The trial court after recording necessary evidence tendered by the prosecution passed the impugned order of acquittal of the charge under section 302 IPC. The trial court held that the original accused No.1-Bharat Chimanlal Patel-respondent No.2 herein is guilty for the offence punishable under section 304-Part II and 307 IPC. Accused No.1 thus is held guilty for the offence punishable under section 304 Part II IPC for causing homicidal death of 12 days old baby-girl of Manjulaben by giving kick blows.

3. Both the accused persons came to be acquitted of the charge under section 135(1) of Bombay Police Act. Accused No.2 came to be acquitted of the charges against him. In short, the trial court held the accused No.1-Bharat Chimanlal Patel-respondent No.2 in this appeal guilty for the offence punishable under section 304 Part II, section 307 and 452 of IPC acquitting accused No.2 of the charges by impugned judgment dated 18.4.1994 in Sessions Case No.299/91.

4. Original accused No.1-Bharat Patel is sentenced to suffer Rigorous Imprisonment for five years and fine of Rs.1,000/- in default to undergo further Rigorous Imprisonment for three months for the offence punishable under section 304 Part II IPC. Accused No.1 also sentenced to suffer Rigorous Imprisonment for four years and to pay fine of Rs.500/- in default to pay fine further Rigorous Imprisonment for one month for offence under section 307 IPC and also sentenced to suffer Rigorous Imprisonment for one year and fine of Rs.250/in default to pay fine further Rigorous Imprisonment for 15 days for offence under section 345 IPC with a direction that all the substantive sentences shall run concurrently.

5. This appeal was initially filed against original both accused persons. However, at the time of admission on 9.8.94 by this court by passing order dismissing the appeal against respondent No.1-Suryakant-original accused No.2 and it has not been further challenged.

6. In the course of submissions raised before us our attention was drawn by the Ld.advocate Mr.Bhootabhatti for the respondent-original accused No.1-Bharat Patel that the manner and mode in which the trial of Sessions Case No.299/91 is concerned is not only unjust but is illegal. In that it has been submitted that the trial court by its order, dated 10.2.92 below Exh.6 after hearing only Ld.APP and the Ld.advocate for the original accused No.2 and before appearance of original accused No.1-respondent No.2 herein which came to be passed whereby request of Ld.Addl.Public Prosecutor to consolidate Sessions Case No.365/91 with Sessions Case No.299/91 granted. The trial court held that the Sessions Case No.299/91 as arising out of the same incident and on the day and both the accused persons are the same. It was further observed that the main occurrence is recorded in Sessions Case No.365/91 and the second incident has taken place thereafter, hence, Sessions Case No.299/91 is ordered to be consolidated with Sessions Case No.365/91 and common evidence be led in Sessions Case No.365/91.

7. Accordingly, both the Sessions Cases came to be consolidated and common evidence came to be recorded in Sessions Case No.365/91 and surprisingly the copies of the evidence recorded in trial in Sessions Case No.365/91 came to be placed for adjudication of the complicity of the accused of the said charges.

8. The contention of the Ld.Advocate Mr.Buddhbhatti that the approach of the trial court in consolidating the criminal cases and recording the evidence in one trial and placing of copies in another trial is impermissible. It is further submitted that it has caused serious prejudice to the accused. No reply could be successfully given by the Ld.APP for the obvious reasons. We also find that the approach of the trial court in adjudicating upon the criminal trial having serious charges in a manner as it was done by placing copies of common evidence led in another sessions case is not justified. We are, therefore, satisfied that the impugned judgment of the trial court in so far as the original accused No.1-respondent No.2-Bharat Chimanbhai Patel is concerned is required to be quashed and set aside and is therefore

accordingly quashed and set aside. In the peculiar facts and circumstances there is no other alternative except to set aside the impugned judgment and order and direct the trial court for re-trial. The trial court is ,therefore, directed to conduct trial de-novo in accordance with law and expeditiously. To that extent the appeal shall stand partly allowed.

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